

Case 18-RC-065382

Dated: December 20, 2011

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## **I. STATEMENT OF THE CASE**

National Vision, Inc., d/b/a America's Best Contacts and Eyeglasses, ("Employer"), by and through its undersigned counsel, files this Brief in Support of the Employer's Exceptions to the Report and Recommendation on Objections and Recommendation that Certification of Representative Issue ("Report") issued by Marlin O. Osthus, Regional Director for the Eighteenth Region ("Regional Director"), on December 7, 2011. In the Report, the Regional Director recommended that the Employer's Objections to Election filed on September 26, 2011, be dismissed and the United Food and Commercial Workers Union, Local 653 ("Union") be certified as the representative of the employees employed by the Employer at its Burnsville, Minnesota store.

### **A. Overview**

This case involves improper and objectionable conduct committed by a statutory supervisor on behalf of and as the agent of the Union during an initial organizing campaign at the Employer's Burnsville, Minnesota store. The supervisor's misconduct created the impression among the rank and file employees that the Employer supported the Union's organizing efforts and created the impression that employees risked adverse retaliatory action should they vote against the Union.

During the Union's organizing campaign, Assistant Manager Roger Longenecker ("Longenecker") met individually and collectively with employees and vociferously supported the Union's organizing efforts. By information and belief, the Union was aware of, supported and adopted Longenecker's efforts on the Union's behalf. Moreover, the employees properly viewed Longenecker as their direct supervisor who had participated in employee discipline matters as a representative and agent of the Employer. Consequently, as a result of his

supervisory status and his improper participation in the Union's organizing campaign, Longenecker's conduct improperly interfered with the employees' free and unfettered choice in determining whether to select a collective bargaining representative and materially affected the outcome of the election.

**B. Procedural History**

Pursuant to a representation petition filed on September 26, 2011, and a Stipulated Election Agreement, the Region conducted a secret ballot election on November 4, 2011. The agreed upon bargaining unit included the following:

All full-time and regular part-time nonprofessional employees employed by the Employer at its Burnsville, Minnesota store, excluding managerial employees and professional employees, guard and supervisors as defined by the Act.

During this election, Longenecker cast a ballot, which was timely challenged by the Employer's representative. On March 4, 2011, the Region issued the Tally of Ballots which indicated that a majority of the employees voted in favor of the Union.

On November 10, 2011, the Employer filed timely Objections to the Election ("Objections")<sup>1</sup> concerning conduct directly affecting the results of the election. On December 7, 2011, following an investigation into the Objections, the Regional Director issued her Report.<sup>2</sup> The Employer now files its Exceptions and Supporting Brief to that Report.

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<sup>1</sup> A copy of the Employer's Objections is attached at Tab A.

<sup>2</sup> A copy of the Report is attached at Tab B.

**C. Longenecker Supervisory Duties as the Employer's Assistant Manager.**

In the Report, the Regional Director declined to reach a conclusion as to the supervisory status of Longenecker. Instead, the Regional Director recommended dismissing the Employer's Objections without reaching the merits of this critical issue. *See* Report at 4, fn. 4. To preserve the Employer's arguments with respect to Longenecker's supervisory status and to demonstrate the overwhelming evidence presented to the Region on this issue, Longenecker's supervisory status is discussed below.

Initially, it is notable that Longenecker's compensation was substantially higher than his subordinate employees and was based upon an annual salary rather than an hourly rate. Longenecker's annual wages exceeded by over 150% the wages paid to the hourly employees. As such, Longenecker's salary was closer to that of the General Manager's salary than to the highest paid hourly employee. In addition, Longenecker was eligible to participate in an incentive program that was not available to hourly employees. Petitt Affidavit, p. 8. The following chart illustrates the wages paid to the store's employees.

<b>Name</b>	<b>Job</b>	<b>DOH</b>	<b>Salary</b>	<b>Status</b>
ADAMS, STEFANI M.	Visual Acuity (VA) Tech Uncertified	4/23/2011	\$10.00 Hrly	Part Time
CARRUTHERS, PARIS G.	Optician Unlicensed	1/7/2011	\$8.50 Hrly	Full Time
JAWAHIR, TANYA D.	Optician Unlicensed	1/10/2011	\$8.75 Hrly	Part Time
KNOBLAUCH, BRAD J. <sup>3</sup>	Optician Unlicensed & 3rd Key Holder Associate receives \$1.00 differential for 3 <sup>rd</sup> key position	1/31/2011	\$9.50 + \$1.00 Hrly	Full Time
YOUNG, BRITTANY L.	Front Desk - Receptionist	7/25/2011	\$8.80 Hrly	Part Time
KUEHN, DAVID J.	VA Tech Uncertified	7/25/2011	\$10.25 Hrly	Full Time
<b>LONGENECKER, ROGER J.</b>	<b>Asst. Mgr Eyeglass Unlicensed</b>	<b>12/20/2010</b>	<b>\$34,000 Salary</b>	<b>Full Time</b>
CISSE, TERRI JO	Acting General Manager (Temporary Transfer From Other Store)	3/31/2003	\$47,483 Salary	Full Time

As Assistant Manager, Longenecker's primary responsibility was to serve as the manager of the eyeglass department. Two employer-presented witnesses, Regional Vice President Mauricio Wissinger and Senior Vice President of Operations Sharon Petitt, provided Affidavits to the Region in which they detailed Longenecker's job duties. These Affidavits, which were not appended to the Report, are attached hereto at Tab C and D, respectively. It is also our understanding that Longenecker's job functions were confirmed by at least one employee who provided an Affidavit to the Region. Had the Region also spoken with other employees referred to the Region by the Employer during the Region's investigation, additional employees would have further corroborated the Employer's description of Longenecker's job duties.

In the role of eyeglass department manager, Longenecker supervised approximately 4 employees, including recruiting and hiring personnel, training these employees, providing and

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<sup>3</sup> Knoblauch served as a 3<sup>rd</sup> Key Holder at the time of the election. He has since voluntarily relinquished that position, as well as the \$1/hour differential.

subsequently documenting weekly coaching sessions, supervising the employees interaction with customers and their performance of other job duties and participating in any necessary employee discipline or discharge. Wissinger Affidavit, pp. 1-2; Petitt Affidavit, p. 2. Attached at Tab E is a Final Written Warning and two Terminations generated and signed by Longenecker as the employees' Supervisor, which were also not appended to the Report. *See also* Petitt Affidavit (detailing Longenecker's participation in the employee discipline process).

Attached at Tab F and Tab G are the job description for the Assistant Manager position and information regarding training that Longenecker attended as a manager, respectively, which were not appended to the Report. Additionally, Longenecker was responsible for scheduling employees and assigning day-to-day tasks to those employees to ensure that the eyeglass department operated effectively and efficiently. Finally, when the General Manager is not present at the store, Longenecker assumed the duties of the highest ranking manager at the location. Petitt Affidavit, pp. 6-7.

Longenecker was also provided greater responsibility than his subordinate employees in operating the store. He was authorized to handle payroll, close out registers and the store, and deposit money in the store's bank accounts. As a result of these increased responsibilities, the Employer conducted a background check on Longenecker before his employment date, a process the Employer does not perform for its hourly employees. Petitt Affidavit, pp. 2-3.

With respect to the amount paid to hourly employees, as Assistant Manager, Longenecker participated in the annual process to determine the level, if any, of merit based salary increases provided to hourly employees. At the store, an employee's direct supervisor assesses the associate's annual performance based on identified performance goals. The appraisal is then presented to the next-level supervisor for approval ensuring that the ratings are consistent with



the employee's performance. The appraisal information and the recommendation for a merit-based salary increase, if any, is then presented to district-level management for approval. After approval is granted, the supervisor informs the employee of the increase.

Longenecker has served as the second-level supervisor in rendering these salary decisions. For example, receptionist Stephanie Alvarez's immediate supervisor was Alfred Staffenhagen, who drafted Alvarez's initial performance review document. Staffenhagen then submitted the review to Longenecker for approval. Longenecker included a recommendation for a salary increase and provided it to the District Manager, who approved the recommended increase based on Longenecker's recommendation. Staffenhagen finalized the performance review for presentation to Ms. Alvarez. Subsequently, Staffenhagen, with Longenecker's approval, then presented the appraisal to Ms. Alvarez. Therefore, Longenecker (1) reviewed a supervisor's performance review of a subordinate employee; (2) effectively recommended a merit-based salary increase for that employee; and (3) directed a subordinate to relay the results of the performance review and the salary increase to the hourly employee.

**D. Longenecker's Open and Express Support for the Union.**

The workforce at the Employer's Burnsville facility consisted of relatively recent hires overseen by a short-staffed management staff, which included Longenecker. As such, Longenecker's Union support had a greater impact on the younger workforce who had little exposure to other management personnel than such support may have had on more tenured employees with multiple supervisors.

In the Report, the Regional Director acknowledged Longenecker's vocal pro-Union support during at least one meeting of multiple employees. However, the Regional Director ignored the Employer-provided evidence that Longenecker attended at least three off-site Union

meetings at a local Applebee's restaurant. Apparently, the Region failed to follow-up on this information and interview the other employees who attended those meetings, despite the Employer providing the employees' names and contact information. As such, the Report is based on incomplete information and cannot serve as the basis for dismissing the Employer's Objections.

During Longenecker's meetings with employees and on other occasions, Longenecker frequently discussed job security issues with his subordinates. Longenecker informed the employees that a Union election victory would ensure the employees' positions with the Employer. Therefore, a supervisor who employees believed possessed the authority to discipline or discharge them, informed employees that their positions would not be secure if the Union lost the election.

With respect to Longenecker's relationship with the Union, had the Region interviewed the employees referred to it by the Employer, the Region would have discovered that Longenecker was one of two employees to first meet with the Union to discuss organizing the Employer's store. This relationship between Longenecker and the Union was further confirmed by the e-mail from Longenecker to his supervisor indicating that he had spoken with the Union about the Employer selling services to the Union's health plan. A copy of that e-mail is attached at Tab H. As noted in Petitt's Affidavit, such a discussion between the Union and the Employer was not sanctioned by the Employer and was outside the Employer's business practices. By information and belief, Longenecker contacted the Union regarding organizing the employees and this e-mail regarding the Union's health plan was a byproduct of those discussions rather than the underlying basis for Longenecker's interaction with the Union.

## II. LEGAL ARGUMENT

### A. Longenecker is a Supervisor as Defined by the Section 2(11) of the Act.

Given the job duties and responsibilities described above, Longenecker must be considered a statutory supervisor. Under Section 2(11) of the Act, a supervisor is defined as follows:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Under Board and Supreme Court precedent, in order to be a statutory supervisor, an individual must have the authority to effectuate or effectively recommend at least one of the supervisory indicia enumerated in Section 2(11) of the Act, using independent judgment in the interest of the employer. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) (citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001)). The Employer acknowledges that it possesses the burden of proving that Longenecker is a supervisor. *NLRB v. Kentucky River Community Care*.

In this case, Longenecker performed many of the statutorily identified functions of a 2(11) Supervisor rendering him a statutory supervisor ineligible to vote in a Union election or to be considered a potential bargaining unit member. Longenecker served as the Acting Manager and the highest management representative at the store for prolonged periods while no General Manager was present at the store. Additionally Longenecker continued to serve as the highest management representative at the store for several shifts a week when the General Manager was off duty. See *Wisconsin River Valley District Council*, 211 NLRB 222, 226 (1974) (finding that the employee delegated the authority and responsibility to direct employees in their work and the highest management representative having direct contact with the employees at the jobsite was a

statutory supervisor); *Niskayuna Consumers Cooperative, Inc.*, 155 NLRB 170 (1965); *enfd. NLRB v. Niskayuna Consumers Co-op.*, 376 F.2d 260, (2nd Cir. 1966).

Regardless of whether the General Manager is on-duty, on a daily basis, Longenecker assigned duties to employees and oversaw the completion of those duties. *See Oakwood Healthcare, Inc.*, 348 NLRB at 689 (“The assignment of an employee to a certain department (e.g., housewares) or to a certain shift (e.g., night) or to certain significant overall tasks (e.g. restocking shelves) would generally qualify as “assign” within our construction” of Section 2(11).); *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006) (“The authority ‘responsibly to direct’ is ‘not limited to department heads,’ but instead arises ‘[i]f a person on the shopfloor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ ...provided that the direction is both ‘responsible,’ ...and carried out with independent judgment.”).

With respect to employee discipline, Longenecker has overseen disciplined imposed upon employees, including terminations and final written warnings, for failing to complete assigned duties or follow Employer policies. *See Croft Metals, Inc.*, 348 NLRB 721 (“[F]or direction to be ‘responsible,’ the person performing the oversight must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed are not performed properly.”).

Longenecker also possessed the authority to evaluate and/or oversee the evaluation of employees and to effectively recommend who is provided merit-based wage increases. *See Camaco Lorain Manufacturing Plant*, 356 NLRB No. 143, \*2 (April 29, 2011) (finding that employee who evaluated employees and determined wage increases was a statutory supervisor). As noted above, Longenecker (1) reviewed a supervisor’s performance review of a subordinate

employee; (2) effectively recommended a merit-based salary increase for that employee; and (3) directed a subordinate to relay the results of the performance review and the salary increase to the hourly employee.

Finally, in addition to the primary supervisory status criteria discussed above, Longenecker's role as Assistant Manager also meets many of the secondary criteria the Board has developed including the employees' perception that Longenecker is a supervisor. *See Ken-Crest Services*, 355 NLRB 777, 779 (2001). By information and belief, several employees informed the Region during its investigation that the employees believe Longenecker was their supervisor and treated him as such. Further, the employees did not believe Longenecker was eligible to vote in the Union election due to his supervisory status. Additionally, Longenecker was paid a significantly higher wage than his subordinated and was one of only three employees authorized to close out a cash register and close the store. Consequently, the Employer has established that Longenecker is a supervisor as defined by Section 2(11) of the Act.

**B. Longenecker's Participation in the Organizing Campaign on Behalf of the Union Constituted Objectionable Conduct.**

As noted above, the Employer has established Longenecker's supervisory status and his active participation in the Union's organizing campaign, which other employees and Longenecker would have to concede during any hearing in this matter. As further noted above, the employees considered Longenecker a supervisor who was ineligible to vote in the Union election. Accordingly, as a representative of the Employer, Longenecker's participation in the organizing campaign directly implied to the employees that the Employer favored the Union. Moreover, given Longenecker's prior participation in the disciplinary process, Longenecker's actions created a reasonable fear of retaliation should the employees vote against the Union.

It is well established that the Board recognizes that a supervisor's involvement in organizational activities taints a union election where the supervisor's participation deprives the employees of the opportunity to exercise free choice in selecting a collective-bargaining representative. *See El Rancho Market*, 235 NLRB 468, 473-4 (1978), *enfd.* 603 F.2d 223 (9th Cir. 1979). As such, objectionable conduct occurs where a supervisor's activity implied to employees that their employer favored the union or that there is cause for believing that employees were coercively induced to sign authorization cards and/or vote for the union because of fear of supervisory retaliation. *Id.*; *see also Harborside Healthcare Inc.*, 343 NLRB 906, 907 (2004) (finding that prounion supervisory conduct during the critical period of a representation election may be grounds for setting aside an election if the conduct could reasonably induce employees to support the union because they perceive potential supervisory retaliation or preferential treatment.); *Sheraton Motor Inn*, 194 NLRB 733, 734 (1971) (setting aside an election due to supervisor who solicited authorization cards, actively and outspokenly advocated for union representation, and was the union's "contact man" during the organizational

campaign). The illegality of a supervisor's conduct is determined by whether the conduct "may reasonably be said to have a tendency to interfere with the free exercise of employee rights under the Act" and not whether such coercion was actually successful. *See El Rancho Market*, 235 NLRB at 471.

Under *Harborside*, the Board must consider two factors when determining whether a supervisor's conduct warrants overturning a Board election:

(1) Whether the supervisor's prounion conduct reasonably tended to coerce or interfere with the employees' exercise of free choice in the election. This inquiry includes: (a) consideration of the nature and degree of supervisory authority by those who engage in prounion conduct; and (b) an examination of the nature, extent, and context of the conduct in question. (2) Whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election, based on factors such as (a) the margin of victory in the election; (b) whether the conduct at issue was widespread or isolated; (c) the timing of the conduct; (d) the extent to which the conduct became known; and (e) the lingering effect of the conduct.

*See Harborside*, 343 NLRB 909. "An express promise or threat is not a requirement for finding prounion supervisory conduct objectionable." *Id.*

*Harborside* dealt with the allegedly objectionable prounion conduct of a charge nurse who, among other conduct, threatened that an employee would lose her jobs if she did not vote for the union. Specifically, the nurse informed an employee that her "days here are numbered if this union doesn't get in, tell your coworkers they need to vote for the union." *Id.* at 910. The Board concluded that the supervisory prounion conduct was objectionable as it interfered with the employees' freedom of choice. The Board held that given the supervisor's status, "the employees could reasonably conclude that [she] had the ability to affect their job tenure if the Union lost the election." *Id.* at 911.

In this case, the employees believed that Longenecker, given his supervisory status, had the ability to affect their job tenure. Further, Longenecker repeatedly discussed job security

issues with the employees, informing them that the employees' jobs would be in jeopardy if the Union lost the election. These conversations occurred on multiple occasions and at multiple locations both on and away from the worksite throughout the Union's organizing campaign. Such pervasive conduct that directly implicates the employees' jobs based on the outcome of the Union election is improper and dictates that the election be voided.

Finally, while the Regional Director emphasized the margin of the Union's victory, the Report ignored the small size of the potential bargaining unit. The Board has held that the coercive effect of violation is enhanced by the small size of a unit, which makes it more likely than not that the various threats were discussed among the employees. *See Statewide Transportation, Inc.*, 297 NLRB 472 (1989) (overturning an election in part because the violations occurred within the context of a small bargaining unit); *International Door*, 303 NLRB 582 (1991). Accordingly, as in *Harborside*, the Objections to Election filed by the Employer should be granted and a new election conducted, or alternatively, the matter should be referred to a hearing.

### **III. CONCLUSION**

For the foregoing reasons, the Board should grant the exceptions filed by the Employer in their entirety and should grant the Employer's Objection to Election and order a new election be



conducted, or alternatively, direct the Regional Director to issue and cause to be served on the parties a notice of hearing on the Employer's Exceptions before a Hearing Officer.

Respectfully submitted,

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Dated: December 20, 2011



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 18**

AMERICA'S BEST CONTACTS AND EYEGLASSES,	:	
	:	
Employer,	:	
	:	
	:	
and	:	Case 18-RC-065382
	:	
UNITED FOOD AND COMMERCIAL WORKERS	:	
UNITED LOCAL 653,	:	
	:	
Petitioner.	:	

**OBJECTIONS TO ELECTION**

Pursuant to Section 102.69(a) of the Rules and Regulations of the National Labor Relations Board, America's Best Contacts and Eyeglasses ("Employer") hereby objects to the conduct of United Food and Commercial Workers United Local 653 ("Union") and (name of assistant manager) that interfered with, and affected the outcome of, the election held on November 4, 2011, for the following reasons:

**Objection Number 1**

(Name of assistant manager) serves as a supervisor for the Employer as defined by Section 2(11) of the Act. (Name of assistant manager) pro-Union conduct reasonably tended to coerce or interfere with the employees' exercise of free choice in the election. Specifically, (name of assistant manager) solicited employees to sign Union authorization cards.

**Objection Number 2**

Prior to and following the filing of the Representation Petition, (name of assistant manager) conducted individual meetings with employees to pressure them to vote for the Union.

**Objection Number 3**

Following the filing of the Representation Petition and close to the date of the election, (name of assistant manager) pressured employees to vote for the Union during a staff meeting.

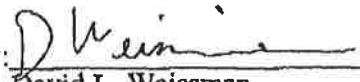
**Objection Number 4**

The Union was aware of (name of assistant manager) status as a statutory supervisor and continued to (name of assistant manager) encourage and support (name of assistant manager) improper coercion and interference with the employees' exercise of their Section 7 rights.

The Employer respectfully submits that the foregoing conduct interfered with the employees' free and unfettered choice in determining whether to select a collective bargaining representative and materially affected the outcome of the election. The Employer objects to these and other acts of the Union and (name of assistant manager) and, as a remedy, requests that the Regional Director review and investigate the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing on this matter.

Dated: November 10, 2011

Respectfully submitted,

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

NATIONAL VISION, INC. D/B/A AMERICA'S BEST  
CONTACTS & EYEGLASSES

Employer

and

UNITED FOOD AND COMMERCIAL  
WORKERS UNION LOCAL 653

Petitioner

Case 18-RC-065382

**REPORT AND RECOMMENDATION ON OBJECTIONS AND  
RECOMMENDATION THAT CERTIFICATION OF REPRESENTATIVE ISSUE**

Pursuant to a petition filed on September 26, 2011 and a Stipulated Election Agreement approved by me on October 7, an election by secret ballot was conducted on November 4, 2011 among certain employees of the Employer.<sup>1</sup> The results of the election are set forth in the Tally of Ballots issued on March 4.<sup>2</sup> The challenged ballot is not sufficient in number to affect the outcome of the election.

<sup>1</sup> The appropriate collective bargaining unit agreed to by the parties and approved by me is defined as:

All full-time and regular part-time nonprofessional employees employed by the Employer at its Burnsville, Minnesota store; excluding managerial employees and professional employees, guards and supervisors as defined in the Act.

<sup>2</sup> The Tally of Ballots reveals:

Approximate number of eligible voters .....	6
Number of void ballots .....	0
Number of votes cast for Petitioner .....	5
Number of votes cast against participating labor organization(s) .....	1
Number of valid votes counted .....	6
Number of challenged ballots .....	1
Number of valid votes counted plus challenged ballots .....	7

Subsequently, the Employer filed timely objections to conduct affecting the results of the election, which were received in the offices of Region 18 on November 10, 2011, and which were served on Petitioner. A copy of the objections is attached as Exhibit 1.<sup>3</sup>

Pursuant to Section 102.69 of the Board's Rules and Regulations, I have caused issues raised by the objections to be fully and carefully investigated and hereby issue this Report.

### **The Employer's Operation and the Stipulated Unit**

The Employer is a Georgia corporation engaged in the retail sale of optical products and eye exams. It has 312 stores located in 43 states. Ten of the 312 stores are located in Minnesota. One of the Minnesota retail outlets is located in Burnsville, Minnesota, which is the location involved in this dispute. The Employer's Senior Vice President of Operations supervises the day-to-day operations of the 312 stores. One of the individuals reporting to the Senior Vice President of Operations is a Regional Vice President for the Central South Group, who is responsible for about 96 stores, including the 10 stores in Minnesota.

The Employer's Burnsville operation is the responsibility of a general manager. Reporting to the general manager is an eyeglass assistant manager. It is the assistant manager's alleged pro-union conduct which is the subject of the Employer's objections. While most of the Employer's retail stores also have an assistant manager for contacts, it appears that the Burnsville store did not have this position filled during most (if not all) of the time in dispute.

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<sup>3</sup> I have redacted the name of the Employer's assistant manager, whose conduct is in dispute in this matter, from the attached copy of the objections.



The unit stipulated as appropriate by the Employer and Petitioner is a unit of nonprofessional employees involved in the retail sale of products. Unit employees perform receptionist duties, sell product, and make sure optical products are correct when after they are returned from the lab. According to the *Excelsior* list provided by the Employer, at the time of the election there were six employees in the unit.

### **The Employer's Objections**

The Employer lists four objections to the election, all related to the conduct of its assistant manager for eyeglasses. Objection 1 claims that the assistant manager solicited employees to sign Union authorization cards; Objection 2 claims that the assistant manager had individual meetings with employees to pressure them to vote for the Union; Objection 3 claims that the assistant manager pressured employees to vote for the Union during a staff meeting; and finally Objection 4 is a general statement that the assistant manager improperly coerced and interfered with employees' exercise of the their Section 7 rights.

Pursuant to the Board's Rules (Section 102.69(c)(1)), the Region conducted an investigation of the Employer's evidence in support of its objections by taking affidavits from all witnesses identified by the Employer as supporting the objections. These witnesses include two high-level managers and an employee of the Employer whose name is on the *Excelsior* list.

The Employer provided no evidence in support of the first two numbered objections. Therefore, there is no evidence that the assistant manager for eyeglasses solicited employees to sign authorization cards or held individual meetings with employees to pressure them to vote for the Union. On the contrary, the single unit employee to testify – allegedly in support of the Employer's objections – stated that an

employee whose name appears on the *Excelsior* list, and not the assistant manager, gave the employee an authorization card to sign. According to the employee, "(The assistant manager) never talked to me and urged or recommended that I sign the Union card ... (The assistant manager) never came up to me and encouraged me to support the Union or encourage me to vote yes." On the contrary, the employee describes in detail efforts by employees named on the *Excelsior* list to contact the employee and gain the employee's support for the Union. Moreover, according to the employee, "I never had a one-on-one meeting with (the assistant manager)." The employee also testified that it is the employee's belief that most of the employees got authorization cards at a Union meeting, and that none of the employee's co-workers ever told the employee that the assistant manager gave them a card or met with individual employees.

On the other hand, the Employer provided evidence that the assistant manager openly supported the Union. For purposes of considering whether the assistant manager's support for the Union constitutes objectionable conduct, I assume *arguendo* that the assistant manager of eyeglasses is a statutory supervisor.<sup>4</sup>

The Employer's evidence points to two instances when the assistant manager demonstrated support for the Union. The first occurred on November 1, 2011 when the Senior Vice President of Operations met with the assistant manager. The purpose of the meeting was to discuss how it came about that employees at the Burnsville operation desired Union representation. During the course of the meeting according to

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<sup>4</sup> The evidence regarding the supervisory status of the assistant manager of eyeglasses is in conflict, and it is by no means clear that the position meets the definition of a supervisor within the meaning of the Act. However, I find it unnecessary to resolve this issue as I conclude that the assistant manager's pro-union conduct did not interfere with employee free choice and did not materially affect the outcome of the election. See, *Northeast Iowa Telephone Co.*, 346 NLRB 465, 466 (2006).

the Senior Vice President, the assistant manager responded to questions in a way that made clear the assistant manager fully supported the Union effort, largely because of dissatisfaction with lack of response from higher ups and with the lack of training. In addition, the assistant manager expressed dissatisfaction with not being promoted to the general manager position. According to the Senior Vice President, the assistant manager "said the issues were real issues and (the assistant manager) agreed with the need for a Union and (the assistant manager) fully supported what they were doing." This meeting lasted about 45 minutes. As a result of the meeting, the Senior Vice President concluded that the assistant manager was "knee deep in this stuff" and reported this conclusion to the Employer's general counsel. However, the Senior Vice President acknowledges that the meeting with the assistant manager was a one-on-one meeting. There is no evidence any agreed upon unit employee participated in or heard this conversation.

The second incident occurred on November 2. Both the Senior Vice President for Operations and the Regional Vice President for the Central South Group described this incident. It occurred during a two-hour meeting with unit employees held by management. According to the Senior Vice President of Operations, "On November 2 we brought in consultants to talk to the employees about the Union. We shut the store down early and brought in lunch for everyone. I was present for the presentation." This is the first time that the Senior Vice President for Operations had been to the Burnsville store.

At the November 2 meeting, the consultants presented slides opposing union representation. For example, according to the Senior Vice President of Operations, one slide stated that if an agreement could not be reached there could be a strike. Another

slide showed the salaries of Union representatives, and the consultant remarked as you can see the Union is not spending any money on Union members "for entertainment." Whenever a slide was presented that the assistant manager or another employee whose name is on the *Excelsior* list disagreed with (including the two described herein), one or both of them challenged the slide. For example, when the consultant presented the slide on salaries, the assistant manager stated, "We know that is not true." Then, according to the Senior Vice President, an employee (identified by name) challenged the Employer further and questioned how much the CEO made "off our backs." At this point the Senior Vice President interjected that what the CEO makes is of no concern to employees. Also covered at the meeting was the failure of the Employer's training program. The Senior Vice President placed the blame on the assistant manager, which caused a verbal retort from the assistant manager. According to the Senior Vice President, "At that point, I noticed that the employees shifted their chairs away from (the assistant manager) and (the employee outspoken in support of the Union)." At the end of the meeting, the Senior Vice President asked that employees give them time to correct the issues as they were not things that could be corrected within 30 or 60 days, and asked that if employee chose to vote, that they vote no. An employee (not the assistant manager) responded that "we need the help and we needed (sic) someone to support us."

#### **The Employer's Submission Fails to Present Evidence that Raises Substantial and Material Factual Issues**

It is the obligation of the party filing objections to come forward with evidence that establishes a prima facie case in support of its objections. Absent such evidence, no hearing on objections need be held. See *Sec. 102.69(d), Board's Rules and*

*Regulations.* As the Seventh Circuit Court of Appeals explained in *NLRB v. Indiana Home Sanitation*, 803 F.2d 345, at 350, enfg. 275 NLRB No. 199 (1985) (not reported in Board volume):

(T)he company did not come forward with evidence that established a prima facie case for setting aside the election. Moreover, it failed to raise substantial and material factual issues requiring a hearing since the Regional Director accepted as true all the evidence it offered, even controverted evidence. The company's only assertion was that a hearing should have been held in order to determine whether the conduct it complained of had an impact on the election. Its failure was that it could not offer any evidence that indicated such an impact was likely.

In the instant case, the Employer has failed to come forward with evidence that establishes a prima facie case for setting aside the election. In this regard, I accept as true the affidavit testimony of the witnesses provided by the Employer. That testimony proves that the assistant manager clearly expressed support for the Union and for employees' efforts to organize at a meeting with an upper-level manager where no employees were present, which is clearly not objectionable conduct because the test is whether the evidence establishes conduct interfering with employees' free choice. That there is internal disagreement among supervisors/managers regarding the wisdom of employees seeking Union representation is irrelevant.

However, there is testimony that proves that the assistant manager clearly expressed opposition to certain representations made by the Employer's consultants at a meeting where the Employer was trying to convince employees to vote against the Union. This pro-union conduct differs markedly from that in *Harborside Healthcare, Inc.* 343 NLRB 906 (2004) cited by the Employer. In *Harborside* the supervisor in question repeatedly told employees that they could

lose their jobs if the union lost the election, initiated loud and intimidating confrontations with employees to cajole them to support the union, and engaged groups of employees in discussions during which the supervisor made repeated reference to the lack of job security. The supervisor told employees that she was counting on them voting for the union, pressured an employee to wear a union pin, solicited authorization cards and signatures on a union petition, and required at least one employee to attend union meetings.

None of the conduct described in *Harborside* occurred in the instant matter. There is no evidence of threats, no evidence that the assistant manager solicited authorization cards, and not even evidence that the assistant manager urged employees to support the Union at any time outside of the context of the November 2 meeting. Rather, the assistant manager's sole conduct was to contradict and argue against the Employer's position during a meeting of employees where the Employer made an anti-Union presentation. The assistant manager's pro-union conduct did not reasonably tend to coerce or interfere with employee free choice.

In addition, the assistant manager's conduct did not materially affect the outcome of the election. First, the vote itself is overwhelming in favor of Union representation. Second, the assistant manager's conduct is isolated to one meeting – a meeting where the Employer's own Senior Vice President of Operations (who had never been to the Burnsville facility before) contradicted the assistant manager's views and blamed the assistant manager for any flaws in the training program. Thus, while the assistant manager clearly made pro-union statements, it is also clear that employees would not attribute them to the

Employer. In fact, the Senior Vice President observed employee conduct which suggested to her that unit employees made an effort to disassociate themselves from the comments of both the assistant manager and a pro-Union employee. Thus, even if the assistant manager's pro-Union conduct were objectionable, it did not materially affect the outcome of the election.<sup>5</sup>

### **CONCLUSION AND RECOMMENDATION**

In conclusion, I find that Employer has failed to show by prima facie evidence the existence of substantial and material factual disputes which, if resolved in Employer's favor, would require the setting aside of the election. See *NLRB v. Whitney Museum of American Art*, 636 F.2d 19, 105 LRRM 3239 (1980) (the right to a hearing arises only when a party shows by prima facie evidence the existence of substantial and material factual disputes which, if resolved in its favor, would require the setting aside of the election).

Based on the foregoing, and as a majority of valid voters were cast for representation, I recommend that a Certification of Representative issue.

#### *Right to File Exceptions*

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. Under the provisions of Section 102.69(g) of the

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<sup>5</sup> The Employer cites additional cases, all predating *Harborside* by 20 years or more, for the proposition that objectionable conduct occurs where a supervisor's activity implies to employees that their employer favors a union, or where a supervisor's conduct causes employees to sign authorization cards and/or vote for a union because of fear of supervisory retaliation. However, as noted herein, there could be no mistake among employees that the Employer opposed the Union organizing effort, and there is no evidence that the assistant manager solicited employees to sign authorization cards or threatened employees in any way if they failed to support the Union.

Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

*Procedures for Filing Exceptions*

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C., by close of business on **December 21, 2011**, at 5 p.m. (Eastern Time), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). *Once the website is accessed, click on **File***



**Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Minneapolis, Minnesota, this 7th day of December, 2011.

/s/ Marlin O. Osthus

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Marlin O. Osthus, Regional Director  
National Labor Relations Board  
Eighteenth Region  
330 South Second Avenue, Suite 790  
Minneapolis, MN 55401-2221

Attachment

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 18**

AMERICA'S BEST CONTACTS AND EYEGLASSES,	:	
	:	
Employer,	:	
	:	
	:	
and	:	Case 18-RC-065382
	:	
UNITED FOOD AND COMMERCIAL WORKERS	:	
UNITED LOCAL 653,	:	
	:	
Petitioner.	:	

**OBJECTIONS TO ELECTION**

Pursuant to Section 102.69(a) of the Rules and Regulations of the National Labor Relations Board, America's Best Contacts and Eyeglasses ("Employer") hereby objects to the conduct of United Food and Commercial Workers United Local 653 ("Union") and (name of assistant manager) that interfered with, and affected the outcome of, the election held on November 4, 2011, for the following reasons:

**Objection Number 1**

(Name of assistant manager) serves as a supervisor for the Employer as defined by Section 2(11) of the Act. (Name of assistant manager) pro-Union conduct reasonably tended to coerce or interfere with the (name of assistant manager) employees' exercise of free choice in the election. Specifically, (name of assistant manager) solicited employees to sign Union authorization cards.

**Objection Number 2**

Prior to and following the filing of the Representation Petition, (name of assistant manager) conducted individual meetings with employees to pressure them to vote for the Union.

**Objection Number 3**

Following the filing of the Representation Petition and close to the date of the election, (name of assistant manager) pressured employees to vote for the Union during a staff meeting.

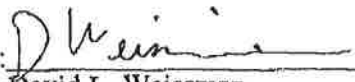
**Objection Number 4**

The Union was aware of (name of assistant manager) status as a statutory supervisor and continued to (name of assistant manager) encourage and support improper coercion and interference with the employees' exercise of their Section 7 rights.

The Employer respectfully submits that the foregoing conduct interfered with the employees' free and unfettered choice in determining whether to select a collective bargaining representative and materially affected the outcome of the election. The Employer objects to these and other acts of the Union and (name of assistant manager) and, as a remedy, requests that the Regional Director review and investigate the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing on this matter.

Dated: November 10, 2011

Respectfully submitted,

By:   
David L. Weissman  
Reed Smith LLP  
599 Lexington Avenue  
New York, New York 10022  
(212) 521-5466

Joel S. Barras  
REED SMITH LLP  
2500 One Liberty Place  
1650 Market Street  
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(215) 241-7990

Counsel for Employer,  
America's Best Contacts and Eyeglasses

C

National Vision, Inc. d/b/a America's Best  
Contacts & Eyeglasses  
Case 18-RC-065382

### Confidential Witness Affidavit

**I, Mauricio Wissinger, being first duly sworn upon my oath, state as follows:**

**I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.**

I reside at 19 Pine Villa Trail, Aurora, OH 44202

My work telephone number (including area code) is: 440/646-9179

My cell phone number (including area code) is: 215/359-6843

My e-mail address is: Mauricio.wissinger@nationalvision.com

I am employed by National Vision

located at 1514 Golden Gate Plaza, Mayfield Heights, OH 44124

I am the Regional Vice President for National Vision, a position I have held since August 1, 2011. Prior to that I was a District Manager from November 2004 through August 2011. I am the Regional Vice President for the Central South group and am responsible for the stores within that group, which is approximately 96 stores, which includes the stores in Minnesota.

My first visit to the Burnsville, Minnesota store was the second week in October 2011. The eyeglass manager in each store reports to the general manager. Their main responsibility is to manage and oversee the eyeglass department. The number of associates in the eyeglass department reporting to that assistant manager could be anywhere from 2 to 4. The assistant manager is responsible for maintaining the inventory of the department, manage and train the

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associates, hold meetings with their staff, maintain books on coaching the associates on a weekly basis and, as part of the management team and in the event the general manager is not present assume responsibilities for the rest of the store. They will also recruit and hire associates and, participate in the process with HR as it relates to coaching or terminating associates, along with another member of the management teams. They also ensure that the associates provide the necessary service to the customers – so this involves scheduling the right amount of people when the traffic is there. They also are responsible for training and developing the associates so they can grow into leadership positions with the company.

When I became the regional vice president there was no assistant manager for contacts in the Burnsville store. At that time, it was the acting store manager Terry Jo and assistant manager for eyeglasses Roger Longenecker who constituted the management team for the Burnsville store.

I had a conversation with Roger when I introduced myself to discuss the department's results when I visited the store in October. When I visit the stores one of my goals is to talk to the management team because they are vital for the success of the stores, so I speak with the general manager, the assistant general managers and the doctor, and I review information that is specific to their department. We were reviewing the report that showed the average sale for the department and he said that he was proud of the average sale that the department was having at that time. I also told him to pay attention to the amount of paid exams in that department and that tends to skew that average sale a little higher. I talked to Roger about the appearance of the department and to make sure to maintain it. I spoke with Roger probably 10-15 minutes and he was going to lunch so he went. I also spoke with Terry Jo, the acting store manager during my visit.



I was in the store during the days before the November 4, 2011 election, but I did not have any one-on-one conversations with Roger about his involvement in the Union election campaign or about his frustration with not being able to reach the VP of HR for the company.

I was present at a meeting held at the store on Wednesday, November 2, 2011. The store was shut down for a period of time. The purpose of the meeting was to educate the store as to what the Union is and also for us to understand some of the issues that the employees were concerned about. The way I understood it, it was a time for us as managers of the company to understand what got us to that point and more importantly to let them understand our commitment to them and promote the good things about the company. This meeting lasted roughly two hours.

I recall being taken back by Roger's behavior at this meeting. My understanding is that him being a manager he was also going to help us in communicating to the staff that there are training programs and there is an open door policy for communications. It took a turn where he was one of them, the associates, instead of a manager. Throughout the conversations where Sharon asked a question – why are we here – to the group I remember that Roger turned to the group and said – we had no other option. Roger took the lead in responding to questions. As a manager I was expecting that we would be facing the associates and answering their questions. It was clear to me that he was advocating for the union, and that he felt this was something he had to do.

We have something called the In Touch system where employees can call in to voice concerns, complaints – it is a third party system. Sharon mentioned that and Roger responded that he was not aware of that.

m-w



At one point Sharon asked the group to give us time to rectify the issues. She addressed the associates in the group and Roger responded. I believe he mentioned that you are all very successful people, and you <sup>now</sup> get to where you are, and how can I trust you. Again, I was baffled as I was looking for the associates to interact with us, and Roger was the one responding. Brad Knoblauch was also vocal. I know another associate, probably Stefani, who asked one question through the slides and it was a question for the gentleman who was doing the presentation for us – the consultant. I believe that Tanya said that she had also called someone from HR and that she did not hear back from HR. Brad also said that he did not get a return call from human resources. I remember at one point I did say that I worked with an HR representative and that they were very good at responding to phone calls, that I was surprised.

Throughout the presentation both Brad and Roger challenged some of the information that was on the slides that the consultant was showing. I believe Roger challenged a slide where the consultants said if you were in a Union and there is a strike and you decide to go to work because it's been so long the Union can take action against you. Roger asked what that meant – he asked if that meant the Union was going to take us to court, or pull us out of the house. He used the term “us.” He told the consultant that he just wanted him to clarify because it could be misleading. If I recall, Brad challenged a compensation slide because the consultant showed that the Union has to file showing the income of the representatives and Brad commented that was not a fair slide to show, because how much does the CEO of our company make.

It was pretty much the close of the meeting and Sharon said she wanted them to give us a chance and to vote “no” and Roger turned to her and said – we can't do that, we're too far down the road. Brad also responded to Sharon to the effect of it was too late.

M.W

I did not have any one-on-one conversations with Roger during the first week in November. I was not present when Sharon was speaking with Roger.

Doctor Christine Freeman works at our store three times a week. I made a trip to the store after the election, and I believe it was on November 18. She told me that Roger did speak with her about the Union and he told her that <sup>now</sup> he supported the Union. She said that surprised her because she said to him that she thought as a manager he could not support it. She told me that he did not respond to her, he ignored her.

The doctor also told me that at the beginning of the year there was an associate named Brad who was using profane language in the store and she felt uncomfortable and she went to Roger as the manager so he could address that with Brad. She told me there was no follow-up in terms of how it was addressed but that the behavior did stop.

I spoke with employee Brittany Young on about November 15, in person. I was conducting an investigation concerning sexual harassment and I spoke with all employees. When I spoke with Brittany she said that she wanted to give us a second chance and give us the six month trial that we asked her to give us. She said she realized that we were sincere people and she wanted to give us a shot. She told me she felt she could not give us a second chance because it was a unanimous decision by everyone to vote for the Union and she felt pressured. I asked if she felt pressured by anyone in particular and she said everyone. At the time I was speaking with her, Brittany had given the company her resignation and her last day was November 22.

I was also in the store on November 16 as part of my investigation into the sexual harassment claims. I was asking <sup>BRAD MUI</sup> him if he remembered making some particular statements to anyone; asked him if he had been any inappropriate comments that had been made; asked him if

MW

there was anything we should know. Brad became very upset and said he was upset we were taking this strategy to get rid of him. At that point I took his information and he said – are we done? I said we were done for now. I spent maybe 10 minutes with Brad in the office. I also questioned other associates that day.

I went back to the store on November 17 and asked Brad a couple of more questions. He did not respond. He also said he did not want to meet with me any more unless there was a witness present <sup>of his choice MW</sup> or unless I was recording our conversation. He stood up, said he no longer wanted to have the responsibility of closing and he was relinquishing his key. He put the key on the desk and left. I did not go after him and I called HR and left a message for them to call me. I ended up speaking with our assistant general counsel Tanya Travers, and she suggested that I ask him to put it in writing. I went to him on the sales floor and asked him to put it in writing and he said very loudly that he told me he did not want to meet with me unless there was a witness present or it was recorded, and that if I had anything to say to him, I could say it there. I said that I needed him to put in writing his request and I put a pad of paper down. He wrote that he had returned the store keys and was now a full time optician. He had verbally told me he understood that his pay rate would decrease by \$1.00 per hour because he was no longer a key holder and he had not included that in what he wrote. So I asked him to confirm that in writing and he did.

District manager Deb Berry sent me a copy of an e-mail that Paris Carruthers sent indicating that she wanted to transfer to a different store. She did not indicate why she wanted to transfer. Stefani Adams also requested a transfer through Deb Barry. Deb told me that Stefani told her that others are not talking to her and it is a hostile work environment for her. Stefani transferred to the Shakopee store last week.

MW

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.


I have read this Confidential Witness Affidavit consisting of 7 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: November 30, 2011

Signature: 

Mauricio Wissinger

Signed and sworn to before me on November 30, 2011  
at Minneapolis, MN

  
Susan M. Shaughnessy, Board Agent  
National Labor Relations Board

COPY RECEIVED

M.W.

D

National Vision, Inc. d/b/a America's Best  
Contacts & Eyeglasses  
Case 18-RC-065382

### Confidential Witness Affidavit

**I, Sharon Petitt, being first duly sworn upon my oath, state as follows:**

**I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.**

I reside at 2760 Olde Towne Parkway, Duluth, GA 30097

My work telephone number (including area code) is: 770/822-4282

My cell phone number (including area code) is: 856/296-3236

My e-mail address is: Sharon.petitt@nationalvision.com

I am employed by National Vision

located at 296 Grayson Highway, Lawrenceville, GA 30045

I am the Senior Vice President of Operations for the Employer. I have held that position sixteen years as of January 2012. I supervise the day-to-day operations of 312 stores located in 43 states. There are 10 stores in Minnesota, all under the name of America's Best Contacts and Eyeglasses. The store involved in these proceedings is known as 5114, Burnsville, MN.

As far as the staffing of the stores, they are staffed to a matrix that we provide to the stores from corporate. We have a general manager who oversees the entire operation. Beneath that person are two assistants – one oversees the eyeglass department and one oversees the contact lens department. They are known as assistant managers. There are hourly employees under both positions. Under the eyeglass manager there are opticians. Their primary

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responsibility is to sell eyeglasses. The contact lens manager oversees the professional services side of the business – the optometric techs and the receptionist. The number of hourly employees depends on the volume of the store. At the Burnsville store, a new general manager started yesterday, November 29, 2011. Terry Jo Cisse was the acting manager from about mid-September to yesterday – she works at the Richfield store. Prior to that, Tiana Stewart worked as general manager for six to eight weeks. Prior to that Kim Johnson was the manager and had been for four or five years. Kim was terminated on 3/22/11. During the time period between Kim and Tiana, Roger Longenecker was the acting general manager. For that time period, Roger was the only assistant manager. Roger was hired in December 2010. Alan Staffenhagen was the contact lens manager, and he resigned in about July 2011 – he had been hired in January 2011. Roger was the only one who had enough knowledge of the business to run the store. He has been in management positions in other optical companies for probably the last ten years.

The most recent hires at the store would have been David Kuehn in the July time period. Paris Carruthers was also hired in July and Brittany Young was hired in July.

The duties of the management team include to make sure the store is staffed adequately; to train and develop the staff; coaching and counseling; and obviously to drive the sales to meet company goals and standards for the store. All the members of the management team – the general manager and the two assistants perform all of these duties. Specifically, Roger was scheduling employees, closing the payroll; taking the money to the bank every day and deposit it -- no hourly employees do this – we have done background checks on all the management team. We did a background check on Roger before he started his employment, because he was coming in as a manager. If we have a store with less than three managers, we will appoint a third

keyholder, who is an hourly person that we trust to open and close the store. We only have three keys for each store.

There is a job description for the Assistant Manager Eyeglasses position. There is a second page for the job description where the individual in that position signs off. It is possible that Roger did not sign that second page, depending on who provided him with the orientation. If a signed copy did exist, human resources would have that. We will check and see if a signed copy exists.

There is a form we call a PPA which is filled out usually by the general manager. The form is used to get someone in the system and get paid. In Roger's case, it was filled out by the district manager at that time. He was hired at a salary of \$33,000 and later increased to \$34,000.

Typically when we have a performance issue we need to address, we offer computer-based training. Roger did take four of these courses on 8/31/11 and we have provided a listing of those courses to the NLRB. Only managers are offered these courses. Typically any performance issues come from the general manager to the district manager to the regional vice president and then to me. I heard there were some issues with not effectively ~~managing~~ <sup>Roger</sup> leading, developing, coaching and counseling the employees.

Employee Stefani Adams was issued a Performance Improvement Plan dated 9/19/11. On the second page she signed it, and in the supervisor's signature block I presume that is Roger's signature with an R and an L – but I do not know Roger's signature. In the witness signature block is the signature of Tiana Stewart, the general manager at that time. The immediate supervisor issues the Performance Improvement Plans. At that time, it would have been Roger as there was no contact lens manager in the store.



Employee Lishona Burch was issued a Performance Improvement Plan dated 4/6/11. She refused to sign it and the supervisor's signature appears to be Roger's. The member of management contacts our Human resources department to partner with them to make sure they are doing everything correctly by the law and to make sure they have enough information and to make sure it is founded. I personally do not know if Roger contacted HR. At this time, there was no general manager in the store. Typically the person who signs it has contacted HR.

When an employee is terminated, the Performance Improvement Plan is the form used to stop the pay. There is such a form for Karen Noreen dated 3/29/11. Roger's name is typed in the supervisor's name block at the top of the form. No one signed the form at the bottom – no associate, no supervisor and no witness.

The payroll is sent to the manager every other Friday. A member of management would hand out the pay checks, or just the stub if an employee was on direct deposit. I have seen a copy of an e-mail dated 3/29/11 concerning the termination of Karen Noreen. The district manager at the time, Jeannette Maddox, wrote that the last check for Karen should be sent to the Burnsville store, to the attention of Roger. Again, this is because only managers hand out the paychecks. We have a form titled "Payroll Manual Check Request" dated 3/29/11 and it indicates that someone was terminated, but it does not have the name of the employee. Under "Additional Information" it reads "Please send to Store 5114 with Attn: Roger Longenecker." We would not send a check to someone who is not on the managerial team. This form reads that it was requested by "Dale U." He works in corporate HR, and he would in turn take this form over to payroll for them to cut the check and then send it to Roger.

When an employee is hired, they are given a copy of the incentive plan for their position. Karen Noreen signed a 2011 Optician Incentive Plan on 1/24/11. It appears that Roger's

signature is on the block for "Supervisor's Signature." At this time, Kim, the general manager was still employed, but Roger was Karen's supervisor, as the manager of that department. There are also incentive plan forms for employees Lishona Burch and Kristina Sticha and those employees signed the forms on 1/24/11 also, and Roger signed Kristina's on 1/24/11 and Lishona's on 1/25/11. So it appears that Roger, as their supervisor, would be doing the orientation for those employees.

There is a PPA for employee Lishona Burch which indicates she walked off the job and her last day worked was 4/5/11. It appears that Roger signed this form under the heading of "Immediate Supervisor."

Employees often float between stores. I have been shown a one-page handwritten document signed by Terry Jo dated 4/5/11. Terry Jo was the general manager at the Richfield store and she writes about "Shona" (and I would guess that refers to Lishona Burch) and coaching and counseling her on some behaviors. The document also reads that Shona may want to call Roger at Burnsville. At this time there was no general manager at the Burnsville facility, and Roger, as a member of the management team, would have filled out the paperwork if Shona walked off the job.

Employee Stephanie Rosario-Alvarez received an Annual Performance Appraisal Receptionist dated 3/23/11 and Roger's name is typed in at the top of the form as the "Reviewing Supervisor's Name." The information typed at the top of the form is generated by Human Resources. HR sends the form to the store about three weeks before the appraisal is due, and a member of the management team fills out the form. This form is signed by Al Staffenhagen as "Assistant Manager/Reviewing Supervisor's Signature" and it appears Roger signed the form above the line that is for "Next Level Supervisor's Signature." This appraisal

was due the day after the general manager was terminated. There is a second page to the appraisal and it contains documentation on the performance report card and other sales measures. The initials of "RL" appear under the column titled "Mgr Initials."

The payroll report for the Burnsville store shows the name of the individuals who ran the payroll for that two-week period. We have provided the NLRB with the data for the week ending 12/4/10 through the week ending 9/24/10. In the last column is the heading "Modified By" and then a name appears. Roger's name appears when he would have run the report. A member of the management team would run the report and verify the hours with the employee. There may have been a situation when an employee forgets to punch in or out, and a member of the management team would note that on the report. The name "Brad" appears on the reports for this time period, and Brad Knoblauch was at that time was a third key holder for the store. As of 11/17/11 Brad returned his store keys and indicated he was only a full-time optician. He acknowledged that his resignation as a third key holder would result in a \$1.00 per hour pay decrease. The names of Mike and Charles were the names used by Kim Johnson, former general manager and the eyeglass manager prior to Roger. Roger is shown as running the payroll during the time that Tiana was the general manager, and it depends on who is closing the store on a Saturday night. Brad's name is shown as running the payroll at time, and that could have been because Roger was not closing on a Saturday night.

Store managers can market our services to other stores or schools nearby, but we would never market our services to a Union. I have been shown a memo dated April 22 that Roger signed that was addressed to Jeannette Maddox and he writes that "We have been talking with Local union 653 . . . regarding their vision plan." He writes that they have 10,000 members plus families and he asked about corporate marketing support that would help steer those potential

customers to us. Again, we would market to other businesses in the strip mall we are located in, or a nearby school, such that a member of management could tell the manager of the other business that we would give their employees a discount to use our services.

The store is open from 9 a.m. until 7 p.m., Monday through Saturday. It is a goal to have one of the three-member management team on staff at all times. They rotate shifts so a member of the team ends up opening a couple of times a week and ends up closing a couple of times a week. Also, the general manager needs a day off during the Monday through Saturday time period – all employees take a day off between Monday and Saturday. Whoever opens the store needs to be there by 8:00 or 8:15 a.m. to verify the closing work from the day before, validate the bank deposit (make sure whoever counted the money the night before was accurate), take the deposits to the bank and make sure the store was merchandised properly. We always open with two people in the store, and one could be hourly. Only members of the management team and key holders have the combination to our safe. So Roger has always had the combination as he was hired as a manager. Brad has the combination to the safe and he got the combination when he became the third key holder after general manager Kim Johnson was let go.

When the general manager is on duty, that person is the manager on duty. If the manager is off, then another member of the management team would be designated as the manager on duty. Whoever is the manager on duty would tell the employees what time they would take their breaks. As the eyeglass manager, Roger would tell the employees in his department to perform certain duties. For example, he could assign someone to restock the frame boards, call the people whose glasses came in the day before to let them know their eyeglasses came in; or to dispense glasses to customers who come in to pick them up. He would tell someone to dispense for two hours, and then move another employee to dispensing because the associates cannot earn

a commission when they are dispensing. So he would divide up the work up fairly. If you are managing that day you would monitor the business throughout the day and manage the dollars, and if sales were down that person could send an employee home. In Roger's situation, that store has been short staffed, so I doubt whether he would have been in a position to send people home. As a manager Roger would be responsible for interacting with the doctor, making sure the doctor knows the schedule for that day, and how the associates are going to support the doctor – make sure there is a tech there who can handle the number of appointments on the book. The manager would know the capabilities of the tech, and if the tech on duty needed assistance, the manager would have the authority to call another tech in if additional help was needed. An assistant manager should be able to work every function in that store.

The incentive plan that managers have is different from the one associates have. As a manager, Roger gets an override – a percentage of all sales sold in the eyeglass department. The associates have an hourly rate plus a percentage of what they sell individually.

I went to the Burnsville store on November 1, 2011. Because Roger was the manager in place I wanted to speak to him and ask him how we got to where we are, and what was going on inside the store that would cause people to want a union. More importantly, as the manager why did he not notify anyone in the company of the organizing activity that was going on. This was the first time I met Roger. I met with him in the store, in the break room and there were people going in and out. I had no opinion on the union good or bad. I introduced myself and said that I understood we had some discontent in the store and I keep hearing training issues. I said I cannot make the connection between people requiring additional training, and how we get a Union in here, and your role in this process. Roger kept saying that “we” haven’t had support here. “We” tried to contact human resources. We tried to call the VP of HR and he didn’t return

the call. He said after the VP didn't return the call "we" felt we had to go outside of the store. I told him there were several avenues you could have taken. I reminded him there was a district manager, a regional vice president, myself, the COO of the company, and none of us were alerted. I told him that as a member of management I would have expected you to place the first call. He said "we" thought calling human resources was the right answer and we didn't know who else to call. I asked Roger how he got that name – Jeff Busbee is the VP of HR and he said it was on the internal web service for the stores. I told him that my name was on that portal as well, and none of us were contacted. I don't believe Roger answered that question. Throughout our conversation he would often just give me a blank stare and/or not answer a question.

Roger told me that he had a charge against the company with EEOC and I said I knew that. I asked him why he felt the need to do that. He said he felt like he had been passed over for the general manager position. I asked if he told anyone that he wanted to be the gm. He said yes, but it was a cursory interview and he knew going it that he wasn't going to get the job. We only interview assistant managers for the general manager job. If you are an associate, the career path then goes to a third key holder, and then an assistant manager – contact lens or eyeglasses, and then general manager. I told Roger that obviously there was a reason when he was interviewed that he wasn't selected. I said I still didn't understand why we were at the point we're at today. He then talked about Tiana Stewart and said she was not qualified. I said she was a general manager for a competitor and she was obviously qualified. He said that he thought he should be part of the interview process and he should have had a say in who his boss was. I said that is not how we do things. We went back to the grievances again and he said – it's training, it's training. I said I still don't know why you would need someone from the outside to handle this. I said we certainly provide all the materials for the managers to train their

employees, and this still doesn't make sense to me. He kept referring to the VP of HR not responding and now it was just ironic that since this petition had been filed that all the "higher-ups" had been showing up in the store. Bruce Steffey, our COO had been there the week before, and another Regional VP came in – in addition to the Regional VP for that store.

Roger would say things like – obviously you guys are successful in your careers and positions and I like what you say to me about we can fix these things, but we're just not sure we can trust you. It was always "we" except when he was talking about his EEO charge.

We also talked about some of the management issues in the store. We spoke for probably 45 minutes to an hour. There were other employees going in and out of the break room, getting their lunches, but no one sat down in the break room.

Roger told me how talented he was, how much experience he had, and that he was an MBA. I told him if he was so disenfranchised with our company, and given that he had an MBA, why was he still working for us. He answered with a really smart ass answer and said – have you seen the unemployment numbers in Minneapolis.

Roger also said that the issues were real issues and he agreed with the need for a Union and he fully supported what they were doing. He did not say that he had been passing out cards. He did not tell me that he had been going to Union meetings.

Obviously, I was very alarmed that Roger was so involved in this process. I thought he would tell me – I'm not really sure what they are doing, I'll work with you guys. But instead he indicated that they were a unit and they wanted to improve things for themselves – he was working with the employees. I immediately called our general counsel Tanya Travers and told him that Roger was "knee deep" in this stuff.

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On November 2 we brought in consultants to talk to the employees about the Union. We shut the store down early and brought in lunch for everyone. I was present for their presentation. Roger and Brad sat at the front of the table, across from each other. It was obvious to me that they were trying to appear as the leaders. Whenever there was a slide put up that they didn't agree with or thought they had more knowledge of, they would challenge the slide. One slide was that if an agreement can never be reached with the company and union through negotiations there could be a strike. Roger spoke up and said that was not going to happen and they would not lose their paychecks. He said their issues were so easy to resolve. There was another slide that showed what the Union representatives were making in salaries, the consultant said as you can see, they're not spending any money on the Union members for entertainment. Roger spoke up and said – we know that's not true. Brad went off and said that these guys may make this money, and this is because they are helping people. Brad said – how much money does Reed Fahs make off our backs? At that point I had been letting the consultants go through the presentation. I spoke up and said I didn't know what Reed Fahs makes, it shouldn't be your concern what Reed Fahs makes, and you are paid to do a job. Brad just looked at me. He said he wanted to bring up another thing. He said he is the third key carrier and he was not sure if he was a manager. Roger said that in his absence that Brad was acting as the manager. I told Brad that he was not a manager, not a supervisor and you are paid an additional wage to open and close the store. Brad said ok, that he was clear on what his roll was.

Then the entire group started talking about training issues. Everyone in the store has training. I had a log which shows which employees have participated in the computer-based training. There is a training module called Information Explosion that every employee is to complete within the first week of hire. Employees take a test at the end of the training and they



get a score. I get data which shows the name of the employee, which training they took, when and their score. I said that as the manager Roger is the person responsible for scheduling you time for taking these training courses and that he was responsible to make sure employees were completing the modules. When anyone is hired, they get written information that indicates the orientation and training they will receive, and it is specific to their job description.

Roger turned around and said that he takes offense at that comment. I told him he could take offense but it was part of his job description to make sure that employees were trained properly. Roger got really red in the face and said – you don't understand, we were under a lot of pressure here, and that he tried to get them the training. It was so apparent to me that he was trying to be the champion of the employees in this whole thing. At that point, I noticed that the employees shifted their chairs away from Roger and Brad.

Roger is the highest paid assistant manager that I have in Minnesota, and one of the highest paid in the country for being in an unlicensed state. (A license is not required in Minnesota for an optician to practice). I acknowledged that we were challenged to find a general manager after Tiana left and that we had put Terry Jo in as an interim while we were looking. I believe Terry Jo was put in as interim shortly after Tiana left, there was not a big gap.

The consultants continued with their presentation.

At one point during the heated discussion, I remember that Paris looked at Roger and Brad and said that these were their issues. They didn't respond to her.

At the end of the meeting I told the group that I understood that they had been listening to the Union people and they made promises and I asked that they give us more time to correct these issues as they are not issues we could not correct within 30 or 60 days. I also asked that if they choose to vote that they vote no. Roger sat there and glared at me. Brad said that we need

the help and we needed someone to support us. The meeting ended and there was tons of food left and they were all dividing up the leftovers and the hourly employees floated out of the front part of the store. Roger, Brad, Terry Jo and other corporate people were still there. I told Roger that we really needed to see if we can't resolve this a different way and he said – we're too far down the road at this point. I went into the office with Terry Jo and Brad came in to get his coat. I told Brad that I knew he was one of the ones initiating this and that I really needed his help on stopping this process and that we could fix these issues and he said – we can't.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 13 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: November 30, 2011

Signature: Sharon Petitt

Sharon Petitt

Signed and sworn to before me on November 30, 2011 at Minneapolis, Minnesota

Susan M. Shaughnessy  
Susan M. Shaughnessy, Board Agent  
National Labor Relations Board

COPY RECEIVED

Initials: DP

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## PERFORMANCE IMPROVEMENT PLAN

Associate's Name:		Stefan Adams			Date:		9/19/11	
Supervisor's Name:		Tara Stewart			Store or Dept. #:		517	
Previous Improvement Plan Sessions:	First Warning Date:		Second Warning Date:		Third Warning Date:		Termination Request Date:	
<b>PLEASE NOTE: DUE TO THE NATURE OR SEVERITY OF SOME ISSUES, THE PROGRESSIVE DISCIPLINARY PROCESS MAY BE ALTERED.</b>								
Type of Warning:	<input type="checkbox"/> Verbal (does not require signature of associate. Manager should sign below.)			<input type="checkbox"/> Formal Written Warning		<input checked="" type="checkbox"/> Final Written Warning		
<b>State the Associate's Actual Performance:</b> List specific dates, details and unacceptable behavior.								
<p>The below describes your substandard performance which requires your immediate attention for immediate and satisfactory improvement.</p> <p><b>Inappropriate Behavior:</b></p> <p>7/18/11 – When the GM was leaving the store you were observed by another mgmt of management gesturing with a stapler in your hand and stating, "I want to throw this at her right now." Any form of threat or violence is unacceptable and is in direct violation of NVI policies.</p> <p>9/12/11 - Brittany informed you that Roger asked that you conduct a contact lens class. While at the front desk you threw down the customer's chart on the receptionist desk and responded, "I'm not doing that fucking class." This behavior inappropriate and unprofessional and will not be tolerated while in the workplace. The contact lens classes is part of your Optometric Technician duties. Refusing to perform an essential function of your duties is considered insubordination.</p> <p>9/19/11 – Customer came in with their glasses that they could not see out of them. The chart was pulled we noticed that his current RX was different from the previous RX. He as asked invited to be tech again and you were instructed to do so. Instead of performing his tech you made a big scene and kept insisting to see his glasses discussing the issue openly in front of other customers. You were not part of the conversation, but had to be told repeatedly that you did not need to see his glasses and to complete the customer's tech.</p> <p>9/19/11 – Another associate was helping a customer who came in with his own glasses. He had been using ammonia to clean his glasses. He was advised that he should not use that product to clean his lenses. You were not involved but insinuated yourself in the conversation and in a condescending manner told the customer, "You cannot do that!" He in turn said I already know that.</p> <p>You have made it your objective to scrutinize associate's job performance and management's directions with the staff and customers. This behavior undermines management's ability to effective lead the store in a successful directions.</p> <p><b>Job Performance:</b> As discussed on August 5<sup>th</sup>, 2011 the FDT % needed to be at company standards (55%) going forward after August 20,2011.</p> <p>Period 8 Week 1 - 46.51% Week 3 - 53.57%</p>								

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SKU # 88811-22511

Week 4 - 45%  
Week 5 - 33.33%

Period 9  
Week 1 - 33.33%

On 9/14/11 - You did not track patients on the patient log for the day to keep track of who was seen by you and who received FDT's. Again this is an essential function of your duties.

**Specific Policies/Laws Violated:** List the specific policies and/or laws violated by the actions above.

HR-NV-05-03 - Harassment  
LG-NV-01-01 - Code of Conduct  
HR-NV-05-07 - Grounds for Dismissal  
HR-NV-06-06 - Workplace Violence

**Performance Improvement Plan:** List the specific results that must be achieved. Include specific time frames for improvement (include attachments if necessary).

**While in the workplace you are expected to conduct yourself in a mature, professional and respectful manner at all times. Refrain from making negative comments or displaying offensive behavior a reasonable person may deem harassing, retaliatory or intimidating.**

**Effective immediately you are expected to meet and maintain company selling standards FDT of 55% or higher.**

**It is the responsibility of store management to direct and supervise associates' duties as appropriate. If you have legitimate concerns or questions escalate those to store management, the DM and or HR so they can be addresses appropriately.**

**Failure to adhere to company policies and procedures may lead to further disciplinary action up to and including immediate termination of employment.**

**Consequences for failure to achieve performance goals:** Check one of the boxes below.

☒ Further action up to and including termination.

☒ Immediate termination.

☒ Other (explain) As an America's Best associate on Final Written, your incentives will be withheld for up to 90 days

**Associate Comments:**

**Associate's Acknowledgement of Receipt:** I, the undersigned, do hereby acknowledge that I have been presented with the above information. Signing does not signify your agreement with the contents of this Performance Improvement Plan rather it only signifies that you have been presented this Performance Improvement Plan.

**Associate's Signature:**



**Date:**

9/19/11

**Supervisor's Signature:**



**Date:**

9-19-11

**\*Witness' Signature:**



**Date:**

9/19/11

**\*Note: If associate "refuses to sign", please write this in the associate signature space and have management associate sign as a witness that the Performance Improvement Plan was issued.**

**H.R. USE ONLY**

H.R. Signature:  
Comments:

Date:

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## PERFORMANCE IMPROVEMENT PLAN

Associate's Name:		Lishona Burch				Date:		04/06/2011	
Supervisor's Name:		Terri Jo Cisse 5111				Store or Dept. #:		5114/5111	
Previous Improvement Plan Sessions:	First Warning Date:		Second Warning Date:		Third Warning Date:		Termination Request Date: 04/05/2011	xx	
<b>PLEASE NOTE: DUE TO THE NATURE OR SEVERITY OF SOME ISSUES, THE PROGRESSIVE DISCIPLINARY PROCESS MAY BE ALTERED.</b>									
Type of Warning:	<input type="checkbox"/> Verbal (does not require signature of associate. Manager should sign below.)			<input type="checkbox"/> Formal Written Warning			<input type="checkbox"/> Final Written Warning		
<b>State the Associate's Actual Performance:</b> List specific dates, details and unacceptable behavior. On 03/12/2011 you were given a formal warning on attendance, 03/30/2011 you were scheduled 8:30 to 6:30; you stated you were not doing well and had to go see your doctor, punched out at 9:45 and returned at 1:30 for the rest of your shift at our Richfield location 5111. 04/04/2011 you called saying you would be in late for your shift, but never showed: at our Burnsville location 5114. 04/05/2011 you were given a coaching on your required behaviors as our front desk person. Shortly after that time you came to Terri the GM of 5111, stating you didnt know what to do, that you mentally didn't feel right. See attached statement. Your shift this day 8:30to 6:30. You punched out for lunch and did not return.									
<b>Specific Policies/Laws Violated:</b> List the specific policies and/or laws violated by the actions above. HR-NV-01-06 Attendance, call in procedures. HR-NV-0507 grounds for dismissal									
<b>Performance Improvement Plan:</b> List the specific results that must be achieved. Include specific time frames for improvement (include attachments if necessary).									
<b>Consequences for failure to achieve performance goals:</b> Check one of the boxes below.									
Further action up to and including termination. <input checked="" type="checkbox"/> Immediate termination. <input type="checkbox"/> Other (explain)									
<b>Associate Comments:</b>									
<b>Associate's Acknowledgement of Receipt:</b> I, the undersigned, do hereby acknowledge that I have been presented with the above information. Signing does not signify your agreement with the contents of this Performance Improvement Plan rather it only signifies that you have been presented this Performance Improvement Plan.									
Associate's Signature:		refuses to sign				Date:			
Supervisor's Signature:						Date:		4-6-11	
*Witness' Signature:						Date:			
<b>*Note:</b> If associate "refuses to sign", please write this in the associate signature space and have management associate sign as a witness that the Performance Improvement Plan was issued.									
<b>H.R. USE ONLY</b> H.R. Signature: _____ Date: _____ Comments: _____									



## PERFORMANCE IMPROVEMENT PLAN

<b>Associate's Name:</b> Karen Noreen		<b>Date:</b> 3/29/2011	
<b>Supervisor's Name:</b> Roger Longenecker		<b>Store or Dept. #:</b> 5114	
<b>Previous Improvement Plan Sessions:</b>	<b>First Warning Date:</b>	<b>Second Warning Date:</b>	<b>Third Warning Date:</b>
			<b>Termination Request Date:</b> 3/29/2011
<b>PLEASE NOTE: DUE TO THE NATURE OR SEVERITY OF SOME ISSUES, THE PROGRESSIVE DISCIPLINARY PROCESS MAY BE ALTERED.</b>			
<b>Type of Warning:</b>	<input type="checkbox"/> Verbal (does not require signature of associate. Manager should sign below.) <input type="checkbox"/> Formal Written Warning <input type="checkbox"/> Final Written Warning		
<b>State the Associate's Actual Performance:</b> List specific dates, details and unacceptable behavior. On 3/25/2011 it was reported that you were searching through pockets of associates jackets. An associate was walking past the breakroom and observed this incident. Two associates brought this incident to the managers attention and asked the manager to cover on a Saturday meeting to have associates not search through others personal belongings. In addition it was reported to management that the associate thought you were looking for drugs due to the fact that you had called her in the morning asking if she would give you some of her medication. At that time, you admitted that you had asked for the medication and that you were searching through other associates personal belongings.  As these actions are against company policy - NVI has decided to terminate your employment immediately.			
<b>Specific Policy Violated:</b> List the specific policy violated by the actions above. Violation of company policy			
<b>Performance Improvement Plan:</b> List the specific results that must be achieved. Include specific time frames for improvement (include attachments if necessary).			
<b>Consequences for failure to achieve performance goals:</b> Check one of the boxes below. <input type="checkbox"/> Further action up to and including termination. <input checked="" type="checkbox"/> Immediate termination. <input type="checkbox"/> Other (explain)			
<b>Associate Comments:</b>			
<b>Associate's Acknowledgement of Receipt:</b> I, the undersigned, do hereby acknowledge that I have been presented with the above information. Signing does not signify your agreement with the contents of this Performance Improvement Plan rather it only signifies that you have been presented this Performance Improvement Plan.			
<b>Associate's Signature:</b>		<b>Date:</b>	
<b>Supervisor's Signature:</b>		<b>Date:</b>	
<b>*Witness' Signature:</b>		<b>Date:</b>	

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# Assistant Manager Eyeglasses - Unlicensed

## Internal Job Description

**Job Title:** ASSISTANT MANAGER – EYEGLASSES

**Department:** Retail Operations

**Reporting Relationships:** The Assistant Manager - Eyeglasses reports to the General Manager.

**Summary of Position:** Ensure that the Eyeglass Department operates in accordance with company policies and procedures. Assist the General Manager with all responsibilities involved in day to day store functions and perform manager's duties during his/her absence. Possess a strong commitment to quality assurance by assisting customers in the selection of optical goods and services to meet their needs while striving to reach the highest possible profit level.

### **Essential Duties and Responsibilities:**

#### **Store Operations**

- Achieve and maintain the highest level of customer service using the "Whatever It Takes" program.
- Supervise Opticians, Visual Acuity Technician, Ophthalmic Technician, Receptionist and Contact Lens Technician.
- Monitor sales results against budgeted amounts and last year's sales.
- Monitor sales performance achievements against company standards.
- Achieve and maintain all identified selling standards.
- Monitor all financial controls to ensure profitability.
- Ensure timely receipt and return of eyeglasses.
- Perform required dispensing duties as necessary.
- Ensure all training and development occurs in store including eyeglass sales training and cross training.
- Review remakes and enforce policies to ensure compliance. Ensure quality standards are met.
- Maintain an organized and efficient department.
- Ensure daily functions are completed prior to start of business (i.e., deposits, daily statistics, scheduling) so that business hours are used to direct staff and control store flow.
- Provide daily and weekly statistics to the GM, Division/District Manager and Corporate office.
- Communicate with General Manager and Division/District Manager as necessary.

#### **Merchandising and Inventory Control**

- Ensure all visual merchandising is implemented and maintained.
- Order and maintain supplies within budgeted amounts.
- Ensure all inventory and fixed assets are maintained and controlled.
- Ensure timely completion of inventory duties as related to eyeglasses.
- Ensure store promotions and advertising are in place and all employees and doctors are aware of current promotions.

#### **Human Resources**

- Constant recruiting for qualified store employees to ensure adequate staffing.
- Ensure staffing guidelines and controls are met.
- Hire, supervise and train all store employees.
- Conduct employee performance appraisals and disciplinary actions following Human Resource guidelines.
- Ensure that Staff Development files are utilized for each optician.
- Motivate employees to exceed performance standards. Recognize and reward star performers.
- Interface with all doctors and maintain appropriate professional relations.

#### **Other Duties and Responsibilities**

- Ensure compliance to all store and corporate policies and procedures.
- Perform such other duties as assigned by management.

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From ???@??? Fri Apr 22 14:34:50 2011  
To: "Jeannette Maddox" <Jeannette.Maddox@nationalvision.com>  
From: Store 5114 <114@twopair.com>  
Subject: Marketing  
Cc:  
Bcc:  
X-Attachments:  
In-Reply-To: <4DAED5B60200003C0000B399@mail.nationalvision.com>  
References:

Good afternoon,

We have been talking with Local Union 653 Minneapolis Retail Meat Cutters & Food Handlers regarding their vision plan. It is a full employee reimbursement plan, as they can purchase eyewear at any location. They have 10,000 members plus families. Do we have any corporate marketing support that would be helpful in steering these potential customers to us?

Thank you,

Roger Longenecker  
Store 5114